

**U.S. Department of Justice Tribal Consultation on
Public Safety in Alaska Native Villages
January 2017**

On August 17, 2016, the Department of Justice (DOJ) announced a government-to-government consultation to establish a plan to better address the unique public safety concerns in Alaska Native communities. The consultation came as a result of public safety concerns raised with Attorney General Loretta Lynch by Alaska Native leaders and youth during a June 2016 visit to Alaska. Consultation sessions were held on August 24 and 25 in Anchorage and on September 8 and 14, 2016, via conference calls. Written comments were received throughout the consultation period. This report is intended to summarize the issues raised and feedback given during the course of the consultation, in accordance with the DOJ's Consultation Policy. This summary is not a decision document, and as such does not create any obligations on DOJ or other Federal agencies.

BACKGROUND

Alaska is home to 229 distinct federally recognized Tribes, scattered across a State that is larger than the next three largest States combined (Texas, California, and Montana). The population of a typical Alaska Native village is measured in the hundreds, not thousands. Many villages are located off the road system and thus can be reached only by air or water. Basic necessities such as food, water, fuel, health care, and telecommunications are expensive and scarce in rural Alaska.

The Public-Safety Crisis in Alaska Native Villages

Delivering law-enforcement and justice services to these remote communities can be challenging. The Alaska Department of Public Safety reports that State troopers' efforts are often hampered by delayed notification, long response distances, and the uncertainties of weather and transportation. Many Alaska Native villages lack any law-enforcement presence at all.

Today, Alaska Natives face extraordinarily high rates of domestic violence, sexual assault, child abuse, juvenile suicide, and alcohol and substance abuse. Earlier this year, the Justice Department's National Institute of Justice released a study showing that more than four in five Alaska Native women — and more than one in three Alaska Native men — have experienced violence in their lifetimes. In 2013, the Indian Law and Order Commission concluded that Alaska Natives are disproportionately affected by crime and that public-safety problems in Tribal communities are systematically more severe in Alaska than in the rest of the

United States.¹ In 2012, the Alaska Rural Justice and Law Enforcement Commission reported that, while Alaska Natives represent about 19 percent of the State’s total population, they are twice as likely to be represented in the State’s juvenile-justice and adult correctional systems, and more than three times as likely to be represented in the State’s child-protection system.²

Rural Alaska’s Criminal-Justice System

The small size and geographic isolation of Alaska Native villages is not their only unique feature, nor can they fully explain the epidemic of violent crime that is currently plaguing their residents. Another important factor is the unique jurisdictional scheme that applies to Alaska Native villages, which is distinct from the norm in Native American communities in the lower 48 States. Two legal features are important to highlight here.

The first legal feature is that Alaska is one of only a half dozen “mandatory P.L. 280” States. This means that, under Public Law 83-280 (*see* 18 U.S.C. 1162), the State of Alaska — rather than the United States — has jurisdiction to prosecute certain crimes committed by or against Native Americans. Therefore, Congress has assigned State law enforcement and State courts, rather than their Federal counterparts, the key role in arresting, investigating, prosecuting, and punishing offenders and thus protecting public safety in Alaska Native villages. The State is also responsible for providing the bulk of funding and other resources in support of public safety efforts.

The second legal feature, which is unique to Alaska, is the near-total absence of recognized Indian country. “Indian country” is a legal term of art, defined in 18 U.S.C. 1151, that, among other things, generally establishes the geographic scope of Tribes’ territorial jurisdiction. In *Alaska v. Native Village of Venetie Tribal Government*, 522 U.S. 520 (1998), the U.S. Supreme Court held that millions of acres of land owned in fee simple by Native villages pursuant to the Alaska Native Claims Settlement Act of 1971 (ANCSA) no longer qualify as Indian country. That ruling limited Alaska Native villages’ authority to exercise criminal jurisdiction over their lands, which in turn placed an even greater responsibility on the State’s highly centralized law-enforcement and criminal-justice systems.

2016 CONSULTATION

The framing paper for the consultation made it clear that while all suggestions on how public safety could be improved in Alaska were welcome, the Department sought feedback on two specific proposals:

¹ http://www.aisc.ucla.edu/iloc/report/files/Chapter_2_Alaska.pdf

² http://akruraljusticecommission.org/efforts_factfinding.html

First, the Department sought the views of Tribal leaders on the creation of a new Alaska Native Villages Public Safety Committee. The proposed Committee would be made up of key stakeholders including members of the Alaska Native community and governance entities, state representatives and the U.S. Attorney. The consultation sought both views on whether the Committee should be established and also on its scope and focus.

Second, the Department asked that Tribal leaders provide their views on the possible creation of a new position of Senior Counselor for Alaska Native Affairs within the Department of Justice. This individual would serve as a full-time liaison to Alaska Native communities and would be responsible for recommending solutions to public safety challenges impacting Alaska Native communities. The consultation sought Tribal input on other duties and areas of emphasis for the proposed Senior Counselor position.

Neither of DOJ's two proposals – the Committee or the Senior Counselor position – received enthusiastic support. Most of the comments received, both oral and written, did not address the two suggestions. A small minority of the commenters indicated some support for the two proposals, but none provided additional feedback on the questions included in the framing paper. A smaller subset of the commenters opposed the two proposals, citing concerns that the resources necessary to create the Commission and Senior Counselor position would detract from resources directly available for public safety in rural villages. It should be noted that overall participation in the consultations was light, so further exploration of the proposals in the future may be warranted.

The consultation did generate feedback on some of the most pressing public safety concerns facing Alaska Native communities. Following is a categorized summary of the feedback that was received.

- 1) **Law Enforcement.** All of the commenters indicated that current law enforcement efforts are insufficient in the mostly rural Alaska Native communities and are the biggest concern and challenge. Commenters cited the underfunded and under-supported Village Public Safety Officer (VPSO) program, the lack of timely response by Alaska Troopers, the lack of cultural competency and knowledge of troopers, the lack of holding facilities for those alleged to have committed crimes pending trooper arrival, jurisdictional barriers caused by the *Venetie* case, and a lack of comprehensive systemic infrastructure to address the levels of violence found in villages. Many also provided comments on the lack of domestic violence shelters available to victims.
- 2) **Drug and alcohol Issues.** Although alcohol and drugs are banned in most of the villages, substance abuse plays a large role in the public safety challenges faced by Native Alaska communities, and numerous commenters allege that banned items are being introduced to the

villages via mail and bush planes. In addition to trafficking concerns, there are inadequate facilities and funding for chemical dependency treatment.

- 3) **Grants and funding.** Commenters described the negative impact of a grants process that was characterized as cumbersome and inadequate. Although applicants for the Coordinated Tribal Assistance Solicitation (CTAS) have had good success rates over the years, the funds available through DOJ grants are not sufficient to meet the overwhelming needs in Alaska Native villages. Some commenters recommended changing DOJ grant programs to a formula-based funding model, and improving access to funding through workshops and trainings to identify all of the possible funding sources across executive branch agencies.

Next Steps:

Due to the unique jurisdictional framework in Alaska, a collaborative approach to coordinating federal funding opportunities and developing sustainable solutions is critical to improving public safety in the villages. Headquarter-level components should discuss the merits of a working group with the U.S. Attorney's Office in the District of Alaska, who has been a long-time liaison and advocate within the Department of Justice. The U.S. Attorney's Office is in a good position to help evaluate whether DOJ, and other Federal agencies, could build on, or contribute to, the State's ongoing efforts to address public safety issues in Alaska Native villages. The State has made significant inroads on public safety issues in recent years and will be a crucial partner in any initiative in the Alaska Native villages.

The following issues were highlighted during the consultation process:

- 1) **Addressing how contraband is reaching the villages.** Tightening safeguards against the flow of illegal substances is an urgent necessity. Recommended partners on this issue include the State, TSA, the Postal Service, Federal and State law enforcement agencies, Alaska Native representatives, and representatives from private airplane companies or contract pilots.
- 2) **Coordinating Federal and State grant resources for the villages.** Taking a coordinated approach to matching available funding with ongoing problems will help ensure more effective use of limited resources. Recommended partners on this issue include Federal and State agencies with relevant grant opportunities and Alaska Native representatives.
- 3) **Bolstering the VPSO program.** Making better use of existing resources may help improve the utility of this much-needed program. Recommended partners on this issue include State and Alaska Native representatives, and Federal agencies with relevant grant and training opportunities.

- 4) **Considering legislative proposals to address jurisdictional challenges.** State or Federal legislation may be necessary to empower Alaska Native villages to take on greater responsibility for public safety in their communities. Recommended partners on this issue include legal experts from State, Alaska Native villages or organizations, and Federal agencies.